

If a taxpayer pays an amount of tax under the Retailers' Occupation Tax Act that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. See 86 Ill. Adm. Code 130.1501. (This is a GIL).

April 6, 2000

Dear Xxxxx:

This letter is in response to your letter dated March 13, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I read your letter of 2/18/00 and I wish to respectfully disagree with a key statement in your letter on which your opinion about a 1% tax vs. a 6.75% tax is based. That statement is 'The padded underwear you intend to sell is merely a protective device similar to a bicycle helmet or kneepads. It is not used to directly substitute for a malfunctioning part of the body and does not qualify for a lower tax rate.'

I believe such a statement would be true in the case of younger adults engaged in athletic activities with normal muscles and bones. Women over age 65 and men over age 70 are not normal in terms of muscle and bone. Women over 65 are 17 years post menopausal on the average and have lost 25-40% of bone mass at the hip. The same is true of older men from 75-95.

A simply sideways fall from standing onto the hip in younger adults rarely if ever will cause a hip fracture. *Unfortunately in the older person as defined above, the hip fractures easily and frequently after a lateral fall because the bone strength is markedly decreased by a age related disruption and distortion of bone architecture and bone mass. These deficiencies are due to osteoporosis. There is no medication available to protect the majority of the elderly from this catastrophic injury which can kill (33-70% mortality) and cripple.(25% end up in nursing homes). The hip bones and surrounding soft tissues are malfunctioning in the elderly and require the support (buttress effect of our product) and the ability of our product to decrease impact force over 95% protecting the weakened and malfunctioning bone from breaking. It not only compensates for abnormal fragile bone, but also replaces atrophic muscles and fat which in the young athletic adult are present and cushion the younger adults fall. In brief; the hip bone and region are defective and malfunctioning. The bone is extremely fragile. The product will only be used by the elderly.*

April 6, 2000

I realize that this is a very new product and just coming to market. The elderly are usually on a limited budget. The reduction of the sales tax is appropriate because of this, and for the reasons stated in red above. I felt that a request for a letter ruling would be inappropriate and unwieldy on a cases by case basis as described in Section 1200.110. If your Department gives us a negative response to this letter, what are our options and methods of appeal from a negative decision.

We are unable to grant the request you have made. The Department's original February 18, 2000 General Information Letter set forth the reasons why the Department does not believe that the padded underwear you sell is a medical appliance substituting for a malfunctioning part of the body. Items that are not medical appliances are subject to the high rate of tax. See 86 Ill. Adm. Code 130.310, enclosed.

General Information Letters cannot be appealed. However, you do have several options. The first option is to pay the tax to the Department and then file a claim for credit. See 86 Ill. Adm. Code 130.1501, enclosed. If a taxpayer pays an amount of tax under the Retailers' Occupation Tax Act that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. Only the persons remitting tax to the Department are authorized to file such claims. No credit shall be given the taxpayer unless the taxpayer shows that it has borne the burden of the tax or has unconditionally repaid the amount of the tax to the customer from whom it was collected. See 86 Ill. Adm. Code 130.1501. The claims for credit must be prepared and filed upon forms provided by the Department containing the information listed in Section 130.1501(b).

If the claim is denied by the Department, that denial can be appealed to the Department's Administrative Hearings Section. See 35 ILCS 120/8 (1998 State Bar Edition.) Decisions made by Department Administrative Law Judges can be appealed to the Circuit Court. See 35 ILCS 120/12 (1998 State Bar Edition.)

Another option is to pay the amount of tax in dispute under protest. The law governing payment under protest can be found at 30 ILCS 230/2a (1998 State Bar Edition.)

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

ST 00-0080-GIL

Page 3

April 6, 2000

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.